Sign & Pictorial Painters Local 550, International Brotherhood of Painters, AFL–CIO *and* Heritage Display Group of Houston, Inc. and Carpenters District Council of Houston & Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 16–CD–145

February 28, 1991

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed September 21, 1990, by the Employer, Heritage Display Group of Houston, Inc. (Heritage) alleging that the Respondent, Sign & Pictorial Painters Local 550 (Painters), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Carpenters District Council of Houston & Vicinity (Carpenters). The hearing was held on October 17 and 18, 1990, before Hearing Officer Nadine Brown.

The National Labor Relations Board has delegated its authority in this proceeding to a three member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Texas corporation, maintains its principal office and place of business in Houston, Texas, and engages in the business of designing, fabricating, and installing trade show exhibits. During the past 12 months, a representative period, the Employer purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of Texas. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Painters and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer designs, builds, installs and dismantles displays and trade show exhibits for use at conventions and other exhibitions. It employs 14 shop employees, who are represented by Painters,[1] to engineer and construct the exhibits. Following construction of the exhibits in the Employer's shop, the shop employees install and dismantle the exhibits at conventions and shows.

During large shows, the shop employees are frequently unable to complete all the installation and dismantling work. The Employer traditionally has hired members of Carpenters as temporary employees to provide extra personnel on these occasions. In December 1988, the Employer entered into a collective-bargaining agreement with Carpenters, which agreement runs through December 18, 1991.[2] Following the execution of this agreement, the Employer continued to use its own shop employees to perform installation and dismantling work at trade shows, and used carpenters only when it required extra personnel. In March 1990, at a trade show held at the George R. Brown Convention Center, in Houston, Texas, Jack C. Carstens, assistant secretary of Carpenters, complained to the Employer that the installation work being performed by members of the Painters was within the jurisdiction of the Carpenters. The Employer removed its shop employees and allowed carpenters to complete the installation of the exhibit booths. The Employer also used carpenters to dismantle the booths.

In June 1990, at a trade show held at the Adams Mark Hotel in Houston, Texas, Carstens again demanded that the Employer remove its shop employees and assign the installation work to carpenters. The Employer initially complied with the demand by removing its shop employees and putting employees represented by Carpenters on the job. However, the Employer later terminated the Carpenters-represented employees and reassigned the work to its shop employees, who then completed the installation as well as the dismantling work.

On August 7, 1990, Painters Business Agent Dee Guinn sent a letter to Stacey Bender, manager for the Employer, stating that if the Employer assigned painters' work to carpenters, Painters would ''immediately picket each and every one of your job sites where violations occur.'' The letter prompted the Employer to file the charge in the instant case alleging that Painters violated Section 8(b)(4)(D) of the Act.

B. *Work in Dispute*

The disputed work involves the preparation, erection, dismantling, and preparation for shipment of exhibits at trade shows, conventions, fairs, and like or re-

[1] The Employer's collective-bargaining agreement with Painters, effective August 1, 1989 through July 31, 1992, has a recognition clause which covers: . . . exhibit builders and exhibit builder helpers performing exhibit building work at the Employer's 3643 Willowbend, #610, Houston, Texas facility.

[2] Art. V, *Work Jurisdiction* of this agreement provides:
. . . all work assigned by the contractors; (2) the uncrating, erection, dismantling and recrafting of all built up fabricated displays at exhibit sites; (3) the handling and erection of all hard wall booths; (4) the building and/or installation of all platforms, mills, turn tables and or any items fabricated or built on the exhibit sites . . . .

lated activities in the greater Houston metropolitan area.[3]

C. *Contentions of the Parties*

Carpenters contends that the arbitration provision of its collective-bargaining agreement provides a method for voluntarily adjusting the dispute and that a 10(k) proceeding is, therefore, not warranted. In the alternative, Carpenters asserts that the work in dispute should be awarded to employees represented by it on the basis of its collective-bargaining contract, area practice, past practice, skills, economy, and efficiency. The Employer contends that Painters' threat to picket its jobsites establishes reasonable cause to believe that Section 8(b)(4)(D) has been violated. Further, the Employer and Painters argue that no voluntary method of adjustment exists that binds all the parties, and that the dispute, therefore, is properly before the Board for determination. The Employer and Painters contend that employer preference, past practice, economy and efficiency, skills, and area and industry practice favor an award of the disputed work to the Employer's shop employees who are represented by Painters.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute under Section 10(k) of the Act, it must be satisfied there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The instant charge was filed in response to a letter from the Painters which specifically threatened that if the Employer assigned the disputed work to Carpenters-represented employees, Painters would picket each of the Employer's jobsites where such an assignment was made. In these circumstances, we find that reasonable cause exists to believe that Painters engaged in conduct which violated Section 8(b)(4)(D) of the Act.

Carpenters asserts there is an agreed-upon method for the voluntary adjustment of the dispute. To constitute such an agreed-upon method, a procedure must bind all parties to the dispute. Teamsters Local 952 (Westside Material), 275 NLRB 1001 (1985). The arbitration provision in the agreement between Carpenters and the Employer on which Carpenters rely does not bind Painters. We therefore reject Carpenters' contention that the parties have agreed on a method to adjust this dispute voluntarily.

Accordingly, we find that the dispute is properly before the Board for determination.

[3] At the hearing and in their briefs to the Board the parties use the shorthand phrase ''installation and dismantling'' when referring to the work in dispute.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making a determination of this dispute.

1. Certifications and collective-bargaining agreements

Painters has been certified by the Board to represent the employees of Heritage. However, the Employer is a party to collective-bargaining agreements with both Carpenters and Painters. Provisions of both agreements arguably cover the disputed work. This factor, therefore, does not favor an award of the disputed work to employees represented by either Painters or Carpenters.

2. Employer preference and past practice

The Employer has used its full-time shop employees to perform installation and dismantling work throughout its history. The Employer's consistent practice has been to assign the installation and dismantling work to the shop employees and to hire employees represented by Carpenters only when it needs additional employees to complete the work.[4] The Employer prefers to have employees represented by Painters perform the disputed work. We find that these factors support an award of the disputed work to employees represented by Painters.

3. Area and industry practice

There was testimony concerning two types of companies involved in the trade show exhibit industry: (1) general contractors which provide decorating work and installation and dismantling services, but do not design and construct exhibits, and (2) exhibit houses which design, build, install, and dismantle exhibits. The record shows, and the Employer and Painters do not dispute, that the general contractors in the Houston area employ employees represented by Carpenters to perform installation and dismantling work. The Employer and Painters contend, however, and the record reflects, that Heritage is an exhibit house. The record indicates that four major exhibit houses in Houston use their own shop employees, who are either unrepresented or are represented by Painters, to design, build,

[4] The Employer deviated from this practice only on the two occasions discussed above where it replaced its shop employees at least temporarily with employees represented by Carpenters, in response to Carpenters' demand to perform the work.

install, and dismantle exhibits. In these circumstances, we find that the factor of area and industry practice does not favor an award of the disputed work to employees represented by either Painters or Carpenters.

4. Relative skills

The record shows that the Employer's shop employees have the skill to install and dismantle the exhibits as well as the skill to design and build them. The record also indicates that Carpenters has training programs specifically designed to teach carpenters how to perform installation and dismantling work. It therefore appears that Carpenters-represented employees equally have the skills to perform the disputed work. Indeed, the Employer does not contend that Carpenters-represented employees are generally less skilled than Painters-represented employees. We therefore find that this factor does not favor an award to employees represented by either Painters or Carpenters.

5. Economy and efficiency of operations

The Employer's representative testified that the Employer's shop employees design and build the exhibits at the Employer's shop. They are, therefore, familiar with the construction of the display. Because many of the exhibits are used five or six times, it is likely that the shop employees will have previously installed and dismantled an exhibit. Thus, they are able to complete the work much more quickly and with less direction than would be required by carpenters. The Employer's representative testified that its shop employees are permanent employees of Heritage. They are shifted from construction of an exhibit to installation and dismantling of the exhibit and from jobsite to jobsite. The Employer's representative testified that an award of the disputed work to employees represented by Carpenters would result in a layoff of shop employees, and would disrupt the functioning and operation of Heritage. Under these circumstances, we find that the factor of economy and efficiency of operation favors an award of the disputed work to employees represented by Painters.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Painters are entitled to perform the work in dispute. We reach this conclusion relying on the factors of company preference and past practice, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Painters, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Heritage Display Group of Houston, Inc., represented by Sign & Pictorial Painters Local 550, International Brotherhood of Painters, AFL–CIO are entitled to perform the work of the preparation, erection, dismantling and preparation for shipment of exhibits at trade shows, conventions, fairs and like or related activities in the greater Houston metropolitan area.